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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,844	03/16/2004	Thomas A. Follo	6579-0128-1	3109
49698	7590	05/18/2007		
MICHAUD-DUFFY GROUP LLP 306 INDUSTRIAL PARK ROAD SUITE 206 MIDDLETOWN, CT 06457			EXAMINER MICHALSKI, SEAN M	
			ART UNIT	PAPER NUMBER
			3724	
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			05/18/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/801,844

Applicant(s)

FOLLO, THOMAS A.

Examiner

Sean M. Michalski

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16, 18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/09/2006 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 6, 9, 11-16 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Perry, as in the action of 02/15/2006.

Additionally it is noted that the button of Perry “when depressed releases the cartridge from the head assembly” see the figures, element 102 is the button.

Additionally it is noted that, although the limitation “the head assembly being pre-assembled prior to being interposed...” is not germane to the issue of patentability, Perry nonetheless inherently possesses this feature, for at least the fact that the head assembly was molecularly pre-assembled prior to being inter-positioned. This claim

interpretation is consistent with the broadest reasonable interpretation standard, since molecular assembly of plastic components is routinely achieved prior to final assembly of a product.

3. Claim 10 is rejected under 35 U.S.C. 102(b) as being anticipated by Apprille'551.

Apprille uses a button assembly as in the '835 Patent, incorporated by reference, and referred to by applicant on page 10 of the remarks submitted 11/09/2006.

The buttons 30 or 31 figure 5 of the '835 Patent clearly release the cartridge when depressed.

Additionally it is noted that, although the limitation "the head assembly being pre-assembled prior to being interposed..." is not germane to the issue of patentability, the head assembly of Apprille is pre-assembled prior to interposition, for at least the reason that the molecular structure of the head assembly was set prior to final assembly of the apparatus.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Applicant has not argued against any of the following combinations, merely the base references applied to claims 1, 10, and 18. Since there has been no traversal of the combinations, and the base references still apply, their interpretation being consistent, and the modifications in no way affecting the propriety of their applicability, they are rejected as set forth in the action dated 2/15/2006; reproduced below (rejection of claims 17 and 20 omitted since the claims are canceled and the rejection is therefore moot):

5. *Claims 2-4, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perry in view of Gerber, Jr. et al. (USPN 4,470,327).*

Regarding claim 2, Perry teaches all the elements of the claimed invention (see section 3 paragraph 2 above) except for an aperture in the second handle portion. Perry has studs that do not depend into the opposing handle portion. Gerber, Jr. et al. teaches the use of at least one stud (figure 1, 20) projecting outwardly from one of the handle portions, an aperture in the opposing handle portion (figure 1, 23) and fastening means (col. 2 lines 39-41). This claim contains means plus function language and as such it is being read in light of the specification. The specification recites that any attachment means are acceptable including adhesives, studs and rivets. It would have been obvious to one skilled in the art at the time the invention was made to combine the teachings of Perry to the teachings of Gerber, Jr. et al. and use a rivet to attach the handle portions of Perry to one another. The stud is a functional equivalent of the structure used by Perry, and is a matter of simple design choice. The motivation to

combine is that at least one stud is shown to be effective at joining handle portions in Gerber, Jr. et al.

Regarding claim 3, Perry teaches all the elements of the claimed invention (see section 7 paragraph 2 above) except for the use of three studs and three apertures in place of one. Gerber, Jr. et al. teaches using three studs (figure 1, 20) and three apertures (figure 1, 23). It would have been obvious to one skilled in the art at the time the invention was made to combine the teachings of Perry with the teachings of Gerber, Jr. et al. and use three studs to attach the handle portions of Perry to one another. The stud is a functional equivalent of the structure used by Perry, and is a matter of simple design choice. The motivation to combine is that three studs are shown to be effective at joining handle portions in Gerber, Jr. et al.

Regarding claim 4, Perry teaches all the elements of the claimed invention (see section 7 paragraph 2 above) except for the fastening means for securing the end of said stud, wherein said means includes a rivet. Gerber, Jr. et al. teaches using three rivets (figure 1, 20) in countersunk rivet-holes (figure 1, 23). It would have been obvious to one skilled in the art at the time the invention was made to combine the teachings of Perry with the teachings of Gerber, Jr. et al. and use three rivets to attach the handle portions of Perry to one another. The rivet is a functional equivalent of the structure used by Perry, and is a matter of simple design choice. The motivation to combine is that three rivets are shown to be effective fastening means for the ends of studs in Gerber, Jr. et al.

Regarding claim 7 Perry teaches all the elements of the claimed invention (see section 3; paragraph 2 and 3 above) except for the use of die cast metal for the handle portions. Gerber Jr. et al. teaches the use of "cast aluminum" for handles (col. 2, lines 50-52). The word 'cast' has the exact same meaning as 'die cast', and aluminum is a metal well known in the art. Gerber, therefore, teaches the use of "die cast metal" for handles. It would have been obvious to one skilled in the art at the time the invention was made to combine the teachings of Perry with the teachings of Gerber, Jr. et al. and use die cast metal, instead of just 'metal', in the handle portions of Perry. In addition, the method of forming the handle is not relevant to the issue of patentability of the device itself. Therefore this limitation is not given patentable weight.

6. *Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Perry in view of Gerber, further in view of Wolfe (USPN 4,184,248).*

Regarding claim 5, Perry in view of Gerber teaches all the elements of the claimed invention (see section 7 above) except for the use of an adhesive as the above referenced fastening means. Wolfe teaches studs "secured therein by one or more additional rivets 28, although those skilled in the art will recognize that other means, such as a suitable adhesive, may be used for this purpose". In the same problem solving area, It would have been obvious to one skilled in the art to modify Perry and incorporate the teaching of Wolfe in order to provide for securing the portions of handle together. The motivation to combine is that adhesive prevents relative movement of the handle sections to the section there-between.

7. *Claim 8 rejected under 35 U.S.C. 103(a) as being unpatentable over Perry in view of Apprille Jr. et al., in further view of C. G. Preis et al (USPN 3,071,857). Perry discloses every component of the disclosed invention (see section 3 paragraph 2) except the use of at least three rivets to join the first and second handle sections together, with at least one rivet extends through the head assembly and at least one other rivet extends through a core interposed between said first and second handle sections.*

Apprille Jr. et al. teaches the use of at least three rivets (18, figure 1), and the use of at least one rivet (all of 18, figure 1) to extend through the core section(12, figure 6).

Preis et al. teaches the use of at least one rivet to extend through the head assembly between two handle portions (figure 3, 15 is a rivet; figure 1 shows the head assembly interposed between two handle portions; figure 6 shows the rivet extending through the head assembly in a cross sectional view).

In the same field of invention, it would have been obvious to one skilled in the art to modify the design of Perry to incorporate the teachings of Apprille Jr. et al. to join handle portions together using at least three rivets, at least one of which being inserted through the core. The motivation to combine is that rivets are more secure coupling devices. It would have been obvious to one skilled in the art at the time of the invention to further modify the design of Perry in view of Apprille Jr. et al. to incorporate the teachings of Preis et al. that at least one rivet should be inserted through the head

assembly. The motivation to combine is to provide a more secure coupling for the head assembly.

8. *Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Perry in view of Apprille Jr. et al.*

Regarding claim 19, Perry teaches all the aspects of the claimed invention (see section 3 and 7 paragraph 2 especially) except for the semi-perpendicularity of the handle portion gripping surfaces to the insert (core) gripping surfaces. Apprille Jr. et al. teaches using gripping surfaces perpendicular to one another, but not the use of insert strips. The perpendicular gripping surfaces in Apprille are unitary, but obscured by the handle portion to provide user contact only in an approximately perpendicular fashion (figure 1, 12 is the large bumpy section in the center, as well as the small area projecting from the right and left of the handle; this is shown as well in figure 2). In the same field of invention it would have been obvious to one skilled in the art at the time of the invention to combine the teachings of Perry with the teachings of Apprille Jr. et al. to provide the razor handle according to Perry with gripping surfaces perpendicular to one another as taught by Apprille. The motivation to combine is to provide the user with a "comfortable and pleasing grip" as taught by Apprille.

Response to Arguments

9. Applicant's arguments filed 11/09/2006 have been fully considered but they are not persuasive.

Regarding applicants addition of the limitation "the head assembly being pre-assembled prior to being interposed..." the method of formation of a product is not germane to the issue of patentability. This limitation does not define over the *structure* of the prior art cited. Furthermore, in both cases, the molecules of the material forming the head assembly (as set forth previously) were unquestioningly *assembled* prior to being interposed. This is an inherent limitation of both the '979 Patent and the '551 Patent.

Additionally, even if the "various elements of the head assembly of the '979 patent are held together by the handle sections when the handle is assembled", this does not preclude the interpretation that the head assembly is pre assembled. One does not exclude the other. The standard of claim interpretation during prosecution is as follows: "claims in a pending application should be given their broadest reasonable interpretation" consistent with the specification and prior art. In re Pearson , 181 USPQ 641 (CCPA 1974). See additionally MPEP 904.01, and also In re Morris, 127 F.3d 1048, 44 USPQ2d 1023 (Fed. Cir. 1997). It has been established that during examination, where applicant has the ability to amend claims, the standard of claim interpretation is that the broadest reasonable interpretation be given to all the terms of a claim, *absent a specific definition provided in the specification*, which would then control. Additionally, The functional statement "the head assembly being pre-assembled" has been given patentable weight insofar as the recited head assembly must be *capable of* being "pre-

assembled". This claim interpretation is mandated in MPEP 2106 II C which states "Language that suggests or makes optional but does not require steps to be performed or **does not limit a claim to a particular structure** does not limit the scope of a claim or claim limitation."

Applicants citation of the '835 Patent and figures therefrom do not dissuade the examiner in his position that the "head assembly" may be "pre-assembled" in the '551 patent. The figures show nothing of merit in establishing whether or not the head assembly was "pre-assembled". No convincing line of reasoning has been advanced to make any showing that the examiners position is incorrect in any way. Favorable reconsideration is denied.

Regarding the allegation that each of the base references ('551 and '979 Patents) do not disclose " a button that, when depressed, releases the razor cartridge from the head assembly", this argument is without merit. Please see the base references, which clearly have buttons, that when depressed release the cartridge from the head assembly. In the '551 patent the button is referenced in Patent '835, and is labeled 30, or 31 in figure 5 (as shown by applicant in page 10 of the submission of 11/09/2006). The recitation "a button..." does not exclude a second button as shown in the '551 Patent. In the '979 patent the button is labeled 102.

Regarding applicants contention on pp. 10 of remarks submitted 11/09/2006, lines 12 and 13, that the button is not operable to release the cartridge from the assembly prior to being interposed between the side sections, Examiner would like

to state that this feature is not required by the claims as written. The standard of claim interpretation during prosecution is as follows: "claims in a pending application should be given their broadest reasonable interpretation" consistent with the specification and prior art. In re Pearson , 181 USPQ 641 (CCPA 1974). See additionally MPEP 904.01, and also In re Morris, 127 F.3d 1048, 44 USPQ2d 1023 (Fed. Cir. 1997). It has been established that during examination, where applicant has the ability to amend claims, the standard of claim interpretation is that the broadest reasonable interpretation be given to all the terms of a claim, *absent a specific definition provided in the specification*, which would then control.

Conclusion

10. This is an RCE of applicant's Application No. 10/801,844. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

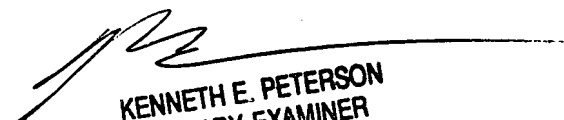
extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean M. Michalski whose telephone number is 571-272-6752. The examiner can normally be reached on M-F 7:30AM - 3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SMM



KENNETH E. PETERSON
PRIMARY EXAMINER